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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,227

02/19/2004

Hidenori Taga

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1888

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7590

10/05/2005

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EXAMINER

KIM, DAVID S

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/783,227

Applicant(s)

TAGA ET AL.

Examiner

David S. Kim

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 20 and 22-25.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on 14 September 2005 have been fully considered but they are not persuasive. Applicant presents an argument against Kiyonaga and an argument against Tomofuji.

Regarding the argument against Kiyonaga, Applicant states,

"Kiyonaga does not disclose the above limitations... There are undeniably substantial differences between 'an amplitude' of a clock [as in Applicant's invention] and 'an average level' of a clock [as in Kiyonaga]. For example, an amplitude level of a clock does not substantially change when a mark rate fluctuate. On the other hand, an average level changes according to fluctuation of a mark rate. This, among other differences, renders the claimed discrimination threshold substantially independent from the fluctuation of the mark rate, while resulting in a simpler circuit implementation" (p. 4-5, bridging paragraph).

Examiner respectfully notes that the term "amplitude" is quite broad. It is broad enough to encompass "average level," which still constitutes an "amplitude." Accordingly, Applicant's argument against Kiyonaga is not persuasive. However, If Applicant's invention employs a narrower scope of the term "amplitude," Examiner respectfully encourages Applicant to adjust the claim language to reflect a narrower scope of the term "amplitude" that does not encompass "average level." For example, Applicant may intend to mean an "instantaneous amplitude."

Regarding the argument against Tomofuji, Applicant quotes a portion of Tomofuji (col. 17, lines 25-42) and concludes,

"This is not the same as 'a threshold controller programmed with information about clock amplitude versus threshold characteristics for determining a signal receiving discrimination threshold by collating an amplitude of the extracted clock from the clock extractor with the clock amplitude versus threshold characteristics,' as recited by claim 20" (p. 6, middle paragraph).

Examiner respectfully notes that such a response amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Accordingly, Applicant's argument against Tomofuji is not persuasive.

To further clarify, Examiner presents a brief description of Tomofuji:

- Notice the clock amplitudes in Fig. 16 (CLOCK COMPONENT on the left side).
- various clock amplitude levels in Fig. 16 correlate to various threshold levels in Fig. 6A.
- e.g., a clock component (i.e., amplitude) of 1.0 correlates to Vr0 in Fig. 6A
- e.g., a clock component (i.e., amplitude) of 0.6 correlates either to a threshold level less than Vr0 in Fig. 6A or to Vru in Fig. 6A
- The apparatus of Tomofuji takes a clock component (i.e., amplitude) value, correlates it to the present threshold level, and uses this correlation to set the signal receiving discrimination threshold value ref of amplifier 31a.

This description appears to fit the claim language in claim 20. Thus, Examiner respectfully maintains the standing rejections under Tomofuji.

Summarily, Applicant's arguments against the prior art of record are not persuasive. Accordingly, Examiner respectfully maintains the standing rejections under the prior art of record.


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